SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 162

THE UNITED STATES OF AMERICA, APPELLANT

vs.

GREGORIO CHAVEZ AND JOSE MARIA CHAVEZ

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW MEXICO

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1-2 [Citation in usual form showing service on David A. 9 Grammer omitted in printing.]

3 In United States District Court, District of New Mexico

UNITED STATES OF AMERICA, PLAINTIFF

vs.

GREGORIO CHAVEZ AND JOSE MARIA CHAVEZ, DEFENDANTS

Indictment

(Filed Feb. 18, 1933).

At the regular September 1932 term of the District Court of the United States for the District of New Mexico, held at the city of Santa Fe, New Mexico.

The grand jurors for the United States of America, duly empaneled, sworn, and charged in the District Court of the United States in and for the District of New Mexico, at the term and place aforesaid, and inquiring for said district, on their oath present that heretofore, to wit: On or about the 3rd day of January, A.D. 1932, at and within the limits of the pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property, to wit: One (1) white mule branded "4—8" of the property of Antonio Abeyta and of the value of thirty and no/100 ($30.00) dollars; the said Antonio Abeyta being then and there an Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

SECOND COUNT:

And the grand jurors aforesaid, on their oath aforesaid, do
4 further present that heretofore, to wit, on or about the 3rd day of January, A.D. 1932, at and within the limits of the pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this Court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property to wit: One (1) bay horse mule branded "4—8" of the property of Antonio Abeyta and of the value of thirty and no/100 ($30.00) dollars; the said Antonio Abeyta being then and there an Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

THIRD COUNT:

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on or about the 3rd day of January, A.D. 1932, at and within the limits of the pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property, to wit: One (1) roan horse and one (1) gray horse, each branded "R L" of the property of Remijio Lucero, and of the value of fifty and no/100 ($50.00) dollars; the said Remijio Lucero being then and there an Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

FOURTH COUNT:

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on or about the 3rd day of January, A.D. 1932, at and within the limits of the pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property, to wit: One (1) bay horse branded |—S of the value of fifty and no/100 ($50.00) dollars, of the property of Esquipula Jojola; the said Esquipula Jojola being then and there an Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

FIFTH COUNT:

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on or about the 3rd day of January, A.D. 1932, at and within the limits of the pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property, to wit: One (1) black horse, unbranded, of the value of fifty and no/100 ($50.00) dollars, and one (1) light bay horse, branded AD of the value of thirty-five and no/100 ($35.00) dollars, and one (1) dark bay horse branded AD of the value of thirty-five and no/100 ($35.00) dollars, each of the property of Marcelina Lente, the said Marcelina Lente being then and there an

Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

SIXTH COUNT:

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on or about the 3rd day of January, A.D. 1932, at and within the limits of the Pueblo of Isleta, the same being Indian country, in the State and district of New Mexico and within the jurisdiction of this court, Gregorio Chavez and Jose Maria Chavez, who were then and there, each and both non-Indians and each and both late of said district, did unlawfully, wilfully, knowingly, and feloniously steal, take, and carry away certain property, to wit: One (1) buckskin mule, unbranded, of the property of Remijio Jojola, and of the value of sixty and no/100 ($60.00) dollars, the said Remijio Jojola being then and there an Indian of the pueblo of Isleta, contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States.

HUGH B. WOODWARD,
United States Attorney.

A true bill.

T. M. QUERBOLAUX, *Foreman.*

[File endorsement omitted.]
Bail, $1,000.00.

7 In United States District Court

Motion to quash

Filed March 11, 1933

Come now Gregorio Chavez and Jose Maria Chavez, defendants in the above entitled and numbered cause, by their attorney, David A. Grammer, and move the court to quash the indictment in said cause, and that for ground for said motion respectfully show the court:

I

That in neither of the six counts of said indictment nor in any of them is it alleged that the defendants herein are Indians or that the crimes and offenses alleged were committed within the exclusive jurisdiction of the United States.

II

That in the six counts of the said indictment, and in each of them, it is alleged that the offenses were committed within the limits

of the pueblo of Isleta, the same being Indian country, whereas, in truth and in law, no part of the pueblo of Isleta nor the lands thereof are Indian country.

III

That the United States District Court for the District of New Mexico has no jurisdiction to try a non-Indian for any offense committed within the jurisdiction of the State of New Mexico.

IV

That the pueblo of Isleta lies within the exterior boundary of the State of New Mexico, and that the State of New Mexico has never relinquished its criminal jurisdiction over said lands, and that the United States District Court for the District of New Mexico has no jurisdiction to try a non-Indian for any offense committed within or upon the pueblo of Isleta.

V

That the relationship between the United States of America and the Pueblo Indians, being that of guardian and ward, confers no extra-constitutional powers or status upon the Federal Government, by which it may enforce its criminal laws upon the
8 citizens of the State of New Mexico.

Wherefore, defendants, by their attorney, move the court to quash the indictment in the above entitled and numbered cause.

DAVID A. GRAMMER,
Attorney for Defendants.

In United States District Court

Order sustaining motion to quash the indictment

Filed March 17, 1933

The above-entitled cause coming on to be heard in open court this 15th day of March, A.D. 1933, at Santa Fe, New Mexico, upon the demurrer interposed by the defendants to the indictment in said cause, and the court having heard the argument of counsel and being fully advised, thereupon

It is ordered that the demurrer to the said indictment be and the same is hereby sustained on the ground that the facts pleaded show that this court has no jurisdiction in said cause for the reason that the facts pleaded do not constitute a violation of any statute of the United States, and for the further reason that under the Enabling Act of Congress for the State of New Mexico, the lands within the

Isleta pueblo grant do not constitute Indian country within the contemplation of R.S., sec. 2145, title 25, sec. 217, U.S.C.A.

It is further ordered that the demurrer to said indictment having been sustained, said cause is dismissed for want of jurisdiction in this court.

To all of which the plaintiff is allowed an exception.

At Santa Fe, New Mexico, this 15th day of March, A.D. 1933.

COLIN NEBLETT,
United States District Judge.

9 In the United States District Court

Certificate of presiding judge

Filed March 17, 1933

It is hereby certified that the order and judgment in the above-entitled case made and entered sustaining the demurrer to the indictment and dismissing said cause was based entirely upon the construction by the court of the enabling act for New Mexico (H.R. 18166) as applicable to R.S. Sec. 2145, title 25, sec. 217, U.S.C.A., and not on any defect in the indictment itself, it being the opinion of the court that under the enabling act, the constitution of the State of New Mexico and the statutes of the United States applicable thereto, the matters and facts pleaded in said indictment, under the construction of said statutes as adopted by this court, do not constitute a violation of any Federal statute for the reason that this court has no jurisdiction over the criminal offense of larceny when committed upon lands within the boundaries of the Isleta pueblo grant in the State of New Mexico by a non-Indian, the personal property stolen being property of an Indian, the jurisdiction to try said offense being vested exclusively in the State court of the State of New Mexico.

At Santa Fe, New Mexico, this 15th day of March, A.D. 1933.

COLIN NEBLETT,
United States District Judge.

In United States District Court

Petition for appeal and order allowing same

Filed April 14, 1933

Comes now the United States of America, plaintiff in the above-entitled cause, by Hugh B. Woodward, United States attorney in and for the District of New Mexico, and conceiving itself aggrieved by the order entered in this cause on March 17, 1933, dismissing the indictment on demurrer or motion to quash, prays that an appeal may

be allowed from said order to the Supreme Court of the United States, and in connection with this petition the United States presents herewith its assignment of errors and statement of jurisdiction.

10 Dated April 10, 1933.

UNITED STATES OF AMERICA,
By its attorney:
HUGH B. WOODWARD,
United States Attorney.

Appeal allowed this 14th day of April, 1933.

COLIN NEBLETT,
United States District Judge.

In United States District Court

Assignment of errors

Filed April 14, 1933

Comes now the United States of America, by Hugh B. Woodward, United States attorney in and for the District of New Mexico, and in connection with its appeal makes the following assignment of errors:

1. The district court erred in sustaining the demurrer or motion to quash.

2. The district court erred in holding that it was without jurisdiction in the said cause.

3. The district court erred in holding that the facts pleaded do not constitute a violation of any statute of the United States.

4. The district court erred in holding that, under the enabling act of Congress for the State of New Mexico (36 Stat. 557), the lands within the Isleta pueblo grant in the State of New Mexico do not constitute Indian country within the contemplation of sec. 2145, Revised Statutes, U.S.C., title 25, sec. 217.

5. The district court erred in holding that it had no jurisdiction to try the defendants for the larceny of personal property of Pueblo Indians committed within an Indian pueblo, the defendants themselves being non-Indians.

11 Dated April 10, 1933.

THE UNITED STATES OF AMERICA,
By its attorney:
HUGH B. WOODWARD,
United States Attorney.

12–13 [Omitted.]

14 In United States District Court

Praecipe

Filed April 22, 1933

To the Clerk of the district Court of the United States for the District of New Mexico:

For the purpose of a complete record on appeal in the foregoing case, please prepare, certify, and transmit to the Supreme Court of the United States the following from the files and records of your court:

1. Indictment.
2. Motion to quash the indictment.
3. Order of the court sustaining the motion to quash the indictment.
4. Certificate of presiding judge.
5. Petition for appeal.
6. Order allowing appeal.
7. Assignment of errors.
8. Statement of jurisdiction.
9. Acknowledgment of service of statement of jurisdiction.
10. Citation with acknowledgment of service.
11. This praecipe.

HUGH B. WOODWARD,
United States Attorney.

The issuance and service of a citation to appear in the Supreme Court of the United States in the above-entitled cause is hereby waived, and receipt of a copy of the praecipe for the record is hereby acknowledged this 21st day of April 1933.

DAVID A. GRAMMER,
Attorney for defendants.

15 [Clerk's certificate to foregoing transcript omitted in printing.]

16 In Supreme Court of the United States

Statement of points upon which appellant will rely and designation of entire record for printing

Filed June 10, 1933

STATEMENT

Pursuant to rule 13 of this court, appellant specifies the following as the points upon which it intends to rely in the above-entitled cause:

1. Under the enabling act of Congress for the State of New Mexico (36 Stat. 557) the lands within the Isleta pueblo grant in the

State of New Mexico are Indian country within the contemplation of section 2145, Revised Statutes, United States Code, title 25, section 217.

2. The offense of larceny committed within an Indian pueblo by a person not an Indian against the personal property of a Pueblo Indian is an offense against the United States, of which the United States District Court would have jurisdiction.

The entire record as filed should be printed.

J. CRAWFORD BIGGS,
Solicitor General.

Service is acknowledged this —— day of June 1933.

——,
Counsel for Appellees.

[File endorsement omitted.]

(Endorsement on cover:) File No. 37765. New Mexico, D.C.U.S. Term No. 162. The United States of America, appellant, vs. Gregorio Chaves and Jose Maria Chaves. Filed June 10, 1933. File No. 162 O.T. 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933